

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

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| IN RE: B.B. | : | APPEAL NO. C-090375 |
| | : | TRIAL NO. F05-1922X |
| | : | |
| | : | <i>JUDGMENT ENTRY.</i> |
| | : | |

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court.¹

Appellant Gregory Brown appeals from the judgment of the Hamilton County Juvenile Court terminating his parental rights and granting permanent custody of his son, B.B. to the Hamilton County Department of Job and Family Services (HCJFS).

In his first assignment of error, Brown argues that the trial court failed to conduct an independent review of the magistrate's findings as required under Juv.R. 40(D)(4)(d) because it did not provide any separate analysis in its entry overruling his objection and adopting the magistrate's decision. We disagree.

Juv.R. 40 does not require a court to include any independent analysis in its judgment entry adopting a magistrate's decision.² When a trial court's entry adopts a

¹ See S.Ct.R.Rep.Op. 3(A), App.R. 11.1(E), and Loc.R. 12.

² See Juv.R. 40(D)(4)(b) (stating that "[w]hether or not objections are timely filed, a court may adopt or reject a magistrate's decision in whole or in part, with or without modification").

magistrate's decision in its entirety, Ohio courts generally presume that the trial court has conducted the proper independent review unless the party asserting error has affirmatively demonstrated otherwise.³

Brown relies upon two cases, *Dewitt v. Myers*⁴ and *In re A.W.*,⁵ to support his argument, but they are factually distinguishable. In both cases, the appealing party was able to point to language in the trial court's entry that affirmatively demonstrated that the trial court had applied the wrong standard of review. For example, in *Dewitt*, the trial court explicitly stated, in its entry adopting the magistrate's decision in a custody dispute, that it had had difficulty determining the credibility of witnesses, but that, despite its reservations, it was deferring to the magistrate's finding of abuse by the father and awarding custody of his two children to their mother because there was ample evidence in the record to support the magistrate's findings.⁶ Similarly, in *In re A.W.*, the trial court acknowledged, in its entry adopting the magistrate's finding that a juvenile was delinquent for committing felonious assault, that it was required to conduct an independent review of the magistrate's decision, but it, nonetheless, cited a more deferential standard of review in its analysis of the magistrate's findings.⁷ In this case, however, there is no language in the trial court's entry that demonstrates an improper deference to the magistrate's findings.

While we agree with Brown that a detailed finding by the trial court regarding each objection would tend to demonstrate that the trial court had conducted the

³ *In re Taylor G.*, 6th Dist. No. L-05-1197, 2006-Ohio-1972, at ¶18-21.

⁴ 2nd Dist. No. 08-CA-86, 2009-Ohio-807.

⁵ 10th Dist. No. 08AP-442, 2008-Ohio-6312.

⁶ *Dewitt*, supra, at ¶17-23.

⁷ *In re A.W.*, supra, at ¶2-9.

requisite independent review, it is simply not required under the rule. As a result, we overrule the first assignment of error.

In his second assignment of error, Brown argues that the trial court's judgment awarding permanent custody of B.B. to HCJFS was contrary to the manifest weight of the evidence.

To terminate Brown's parental rights, HCJFS had to prove by clear and convincing evidence one of the four factors enumerated in R.C. 2151.414(B), and that B.B.'s best interest would be served by a grant of permanent custody to the agency.⁸ In making this determination, the trial court was required to consider all relevant factors, including those specified in R.C. 2151.414(D) and (E). The trial court's findings, moreover, had to be supported by clear and convincing evidence. Clear and convincing evidence is that which produces in the mind of the trier of fact "a firm belief or conviction as to the facts sought to be established."⁹

Based upon our review of the record, we conclude that there was competent evidence supporting the juvenile court's finding that it was in the best interest of B.B. to grant permanent custody to HCJFS.

B.B. was born on October 28, 2005. At the time of his birth, he and his mother tested positive for cocaine. When B.B. was released from the hospital, he was placed in the care of HCJFS pursuant to a voluntary-care agreement signed by his mother on November 1, 2005. B.B. has lived with his foster family his entire life and has not spent one night in the care of Brown. When HCJFS moved for permanent custody in September 2007, B.B. had already been in the temporary custody of

⁸ R.C. 2151.414(B)(1).

⁹ *Cross v. Ledford* (1954), 161 Ohio St.469, 120 N.E.2d 118, paragraph three of syllabus.

HCJFS for almost two years.¹⁰ When Brown finally completed all his case plan services, B.B. had been in the custody of HCJFS for over three years.

Brown argues that because he had completed all the case-plan services, the trial court should have reunited him with B.B. instead of awarding permanent custody to HCJFS. But Brown's completion of the case-plan goals was but one factor for the court to weigh in rendering its judgment.¹¹ As the trial court noted, while Brown was given ample time and opportunity to effect change in B.B.'s custodial history, he was unable to consistently visit with B.B., so he never progressed beyond four-hour unsupervised visitation with B.B. Furthermore, during the three-year period it took Brown to complete the case-plan services, B.B. had bonded with his foster family, the only family he knew. His foster family had been able to provide B.B. with appropriate care and had expressed their desire to adopt him.

The ongoing HCJFS case worker and B.B.'s guardian ad litem additionally recommended that permanent custody be granted to HCJFS. B.B.'s mother also testified that it was in B.B.'s best interest to be permanently committed to HCJFS. She testified about her negative relationship with Brown, including their pervasive drug use and domestic violence. Furthermore, there was evidence that Brown had four other children, all of whom were in the custody of other individuals. Brown admitted that three of his children had been in the custody of his mother for at least three years.

Consequently, having considered the record, Brown's arguments, and the applicable law, we hold that the trial court's judgment awarding permanent custody of B.B. to HCJFS was not against the manifest weight of the evidence. We, therefore,

¹⁰ See R.C. 2151.414(B)(1)(d).

¹¹ *In re Brooks*, 10th Dist. No. 04-AP-164, 04AP-202, 04AP-165, and 04AP-201, 2004-Ohio-3887, at ¶62-63.

overrule Brown's second assignment of error and affirm the judgment of the trial court.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., SUNDERMANN and CUNNINGHAM, JJ.

To the Clerk:

Enter upon the Journal of the Court on October 21, 2009
per order of the Court _____.
Presiding Judge